

Care Standards

The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008

[2017] 2972.EY-SUS

Before

Mr H Khan (Judge)

Dr H Freeman (Specialist Member)

Ms D Rabbetts (Specialist Member)

Between:

Mr Nahidur Rahman Choudhury

Appellant

-v-

Ofsted

Respondent

DECISION

The Appeal

1. Mr Nahidur Rahman Choudhury (“the Appellant”) appeals to the Tribunal against Ofsted’s (“the Respondent”) decision dated 15 March 2017 to suspend his registration as a childminder on the Childcare Register for six weeks to 25 April 2017 pursuant to section 69 of the Childcare Act 2006 (‘2006 Act’) and the Childcare (Early Years and General Childcare Registers) Common Provisions) Regulations 2008 (‘2008 Regulations’).

Paper Determination

2. The appeal was listed for consideration on the papers, pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 (‘2008 Rules’). Both parties must consent, which they have in this case, but the Tribunal must also consider that it is able to decide the matter without a hearing.

3. In this case, we have sufficient evidence regarding the nature of the allegations made and the conclusions reached. In the circumstances, we consider that we can properly make a decision on the papers without a hearing.

Restricted reporting order

4. The Tribunal makes a restricted reporting order under Rule 14(1) (a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify the children or their parents in this case so as to protect their private lives.

Events leading up to the issue of the notice of statutory suspension

5. The Appellant was first registered as a childminder on 17 August 2012.
6. On 6 March 2017, the Respondent received concerns which alleged that the Appellant displayed bullying behaviour towards a child, he bullied parents and assistants, roughly handled children and that he operates in breach of staff: child ratios.
7. On 7 March 2017, the Respondent received further allegations regarding the deployment of staff during the school run that he shouted at children and roughly handles children.
8. On 10 March 2017, further allegations were received regarding staff: child ratios, deployment of staff and supervision of children during outings.
9. On 13 March 2017, the Appellant notified the Respondent that two of his assistants had left without giving notice and that he was concerned Respondent may receive malicious complaints.
10. On 14 March 2017, the Respondent received further allegations regarding staff: child ratios, lack of supervision during the school run, concern that the Appellant has been stressed which affected his interaction with others, use of unknown and undocumented assistants. There were allegations that the Appellant shouted at children, made them cry, had high expectations of children, roughly handled and humiliated children and that he provoked children to bully each other.
11. The allegations also included that he picked on children, particularly those who are younger or whose development may be behind, that he did not believe in offering comfort to the children, he gave punishment in the form of lines to children who do not complete their school work and that children were scared and anxious about this. Furthermore, there were allegations he shouted at assistants and other adults in front of the children.

12. On the 15 March 2017, the Respondent made the decision to suspend the registration of the Appellant. The Respondent claims that the decision to suspend the registration had been made on the basis that the children may be exposed to the risk of harm. The decision was taken to allow for all matters to be investigated and to request further information from other agencies.

Legal framework

13. The statutory framework for the registration of childminders is provided under the Childcare Act 2006. Section 69(1) of the Act provides for regulations to be made dealing with the suspension of a registered person's registration. The section also provides that the regulations must include a right of appeal to the Tribunal.

14. When deciding whether to suspend a childminder, the test is set out in regulation 9 of the 2008 Regulations as follows:

“that the Chief Inspector reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm.”

15. “Harm” is defined in regulation 13 as having the same definition as in section 31(9) of the Children Act 1989:

“ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill treatment of another”.

16. The suspension is for a period of six weeks. Suspension may be lifted at any time if the circumstances described in regulation 9 cease to exist. This imposes an ongoing obligation upon the Respondent to monitor whether suspension is necessary.

17. The powers of the Tribunal are that it stands in the shoes of the Chief Inspector and so in relation to regulation 9 the question for the Tribunal is whether at the date of its decision it reasonably believes that the continued provision of child care by the registered person to any child may expose such a child to a risk of harm.

18. The burden of proof is on the Respondent. The standard of proof ‘reasonable cause to believe’ falls somewhere between the balance of probability test and ‘reasonable cause to suspect’. The belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information, would believe that a child might be at risk.

Evidence

19. We took into account all the evidence that was presented in the bundle (consisting of 61 pages). We have summarised some of the evidence.
20. The Appellant's case set out in the bundle including in his statement dated 6 April 2017. The Appellants case is detailed in his statement and includes that he believes not enough information has been provided regarding the allegations.
21. Furthermore, he insists that the allegations are malicious and coordinated by a select few. He describe the suspension as causing disruption, upset and confusion to numerous children and parents. The Appellant denies the allegations including those concerning bullying, encouraging children to humiliate other children, being controlling and aggressive and assaulting any children. The Appellant has enclosed a sample of positive testimonials from parents which describe the standard of care at the setting.
22. He is concerned that the allegations procedure allows complainant's to remain anonymous and is unable to respond to named complainants as their details have never been revealed to him. His case is that the reason for the sheer volume of allegations is "*jealousy by competitors, racism and sexism*".
23. The Respondent's position is set out in the statement of Ms Kathryn Bell dated 4 April 2017. This sets out the allegations referred to above. She confirmed that since registration the Appellant has been inspected six times by the Respondent. Furthermore, the Respondent has received a large number of complaints since registration from different sources.
24. Ms Bell, however, makes it clear that the Respondent did not find any evidence to support breaches of regulations or requirements in relation to previous concerns raised between September 2013 to January 2017.
25. Furthermore, Ms Bell sets out that the reason the suspension was imposed was due to the Respondent receiving information from a number of different sources, which raised concerns indicating a risk to the children due to emotional or physical abuse. These witnesses can be broadly placed into three categories, those from educational establishments, ex-employees and parents. The Respondent needs time to investigate those concerns and to protect children whilst the investigation is completed.
26. Ms Bell accepts that Respondent has not been in a position to share details of the concerns raised with the Appellant as it wishes to preserve the integrity of their investigation and that of other agencies.

27. Ms Bell also acknowledges that the Respondent has not been in a position to share the minute details of the concerns with the Appellant. She submits this has been purposeful so that they can assess his response to the concerns when putting it to him in interview later in the investigation. Ms Bell sets out that two inspectors have been allocated to the case to ensure swift progression of the investigation.
28. Ms Bell points out that she is aware that the Children Social Services within Derbyshire County Council have been attempting to contact the Appellant with a view to completing a single assessment in respect him personally.
29. Furthermore, Ms Bell has been made aware that the Police are considering whether or not to investigate one particular reported incident but that the Respondent has not had confirmation of that as yet.
30. In addition, there is a multi-agency meeting on 21 April 2017 which has been arranged by the designated office for safeguarding within Derbyshire County Council. The Respondent's inspectors will be attending this meeting as will the police and social workers.
31. The Respondent's proposal is for the Appellant to then come in for an interview on around 24 April 2017. Ms Bell intends to review the suspension following interview and hopes to be in a position by this point to make a decision with regards to suspension and the continued registration of the Appellant.

The Tribunal's conclusions with reasons

32. The standard required to justify a suspension is not a high one. During the short period of the suspension, it is for the Respondent to investigate matters to determine if there is a case for longer-term enforcement action, or whether the outcome of the investigation is that there is no longer reasonable cause to believe children may be harmed.
33. We reminded ourselves of the lower threshold for confirming the suspension and reminded ourselves that at this stage we are not finding facts.
34. We concluded that we were satisfied that there may be a risk of harm to a child placed in his care. Our reasons for doing so included the nature of these allegations, along with fact that some of the current allegations have been identified at previous inspections. Furthermore, we noted that the allegations have come from various sources, including those from educational establishments, ex-employees and parents. Whilst the Appellant is concerned that the allegations are being made by disgruntled ex-employees, Ms Bell has confirmed that

the sources of the allegations are not limited to that group and include parents and others.

35. We concluded that whilst we understood the Appellant's concerns regarding the lack of details around the allegations, we took account of the Respondent's approach at this delicate stage of the investigation including its submissions that it did not wish to jeopardise any assessment and investigation by other agencies.
36. In particular, we relied on the assurances of the Respondent that it has almost completed its investigations and in any event will be inviting the Appellant in for an interview, on or around 24 April 2017 and will put all the concerns to him and will invite his response. The Appellant will, according to the Respondent, therefore, be made fully aware of all the details of the allegations against him by the time that this suspension ends on 25 April 2017.
37. Furthermore, we noted that there is multi-agency involvement in the matter including the Respondent, Derbyshire County Council and the Police. The Police are yet to decide whether or not to investigate one particular reported incident. In addition, a multi-agency meeting will take place on 21 April 2017 after which the Respondent will interview the Appellant and then make a decision with regards to suspension. We would anticipate that the Respondent will ask the police and Derbyshire County Council to set out their position in relation to their investigations at that meeting.
38. We also concluded that the Respondent is taking all steps necessary, at this stage, to ensure the swift progression of its investigation. It has allocated two inspectors to the case and has drawn up a plan of potential witnesses and is now systematically working through the plan. Whilst, we can understand the Appellant's concerns regarding the length of investigation, we are assured by Ms Bell's submission, that it is her intention to ensure that the Respondent completes its investigation within the initial suspension period.
39. We acknowledged the positive references from parents that have been provided by the Appellant in support of his appeal. It is not clear, as the Respondent suggests, what knowledge those contributing had of these proceedings, but, nevertheless, we acknowledged that these were positive references.
40. In reaching our decision, we also took into account a range of factors including the Appellant's circumstances, the parents who use the services and the disputed nature of the allegations. However, in our view, the nature of the allegations led us to conclude that at this point, the action taken is both proportionate and necessary.
41. We reminded ourselves that suspension may be lifted at any time if the circumstances described in regulation 9 cease to exist. This imposes

an ongoing obligation upon the Respondent to monitor whether the suspension is necessary.

42. We conclude therefore that the continued provision of child care by the Appellant to any child may expose such a child to a risk of harm.

Decision

43. The decision to suspend registration is confirmed and the appeal is dismissed.

**Judge H Khan
Lead Judge Primary Health Lists/Care Standards
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 12 April 2017